

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN**

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In re:

David Lester Warfel, Jr. and Jeanne Marie  
Warfel,

Case No. 1-20-11651-cjf

Debtors.

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David Lester Warfel, Jr., Jeanne Marie Warfel,

ADV Case No. 1-21-00002-cjf

Plaintiffs,

v.

**ANSWER TO PLAINTIFF'S  
COMPLAINT**

21<sup>st</sup> Mortgage Corporation.

Defendant.

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Defendant 21<sup>st</sup> Mortgage Corporation ("21<sup>st</sup> Mortgage"), by Counsel, files its Answer and Defenses to Plaintiff's Complaint ("Complaint") as follows:

**PRELIMINARY STATEMENT**

In answering the Complaint, 21st Mortgage denies any and all allegations in the headings and/or unnumbered paragraphs in the Complaint. Except as hereinafter admitted, qualified or otherwise answered, 21st Mortgage denies each and every matter, thing and allegation in Plaintiff's Complaint.

1. With respect to the allegations contained in paragraph 1, 21<sup>st</sup> Mortgage admits that to the extent Plaintiffs have properly alleged their claims, the Court may exercise its jurisdiction.

2. The allegations contained in paragraph 2 of the Complaint are legal conclusions and, as a result, no response is required.

3. With respect to the allegations contained in paragraph 3 of the Complaint, 21st Mortgage admits that Plaintiff asserts that the Complaint was filed purporting to allege a claim or claims under 11 U.S.C. § 544 to avoid the lien of 21<sup>st</sup> Mortgage.

4. 21<sup>st</sup> Mortgage admits the allegations contained in paragraph 4 of the Complaint.

5. 21st Mortgage is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint.

6. 21<sup>st</sup> Mortgage admits that debtor Jeanne M. Warfel (“J. Warfel”) owns a 2019 Skyline Manufactured Home (the “Manufactured Home”), and affirmatively asserts that it loaned the funds to J. Warfel to purchase the Manufactured Home. 21st Mortgage is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 6 of the Complaint

7. With respect to the allegations contained in paragraph 7 of the Complaint, 21<sup>st</sup> Mortgage admits that it filed a Proof of Claim on July 1, 2020 (“Claim No. 2”), and affirmatively asserts that the document speaks for itself.

8. With respect to the allegations contained in paragraph 8 of the Complaint, 21st Mortgage admits that it did not file a mortgage on any real property. 21<sup>st</sup> Mortgage denies the remaining allegations contained in paragraph 8.

9. The allegation contained in paragraph 9 of the Complaint is a legal conclusion and, as a result, no response is required.

10. 21<sup>st</sup> Mortgage admits that the Debtor's filed an objection to Claim No. 2.

11. With respect to the allegations contained in paragraph 11 of the Complaint, 21st Mortgage admits that it did not request a hearing on the Debtor's objection to Claim No. 2. 21<sup>st</sup> Mortgage affirmatively asserts that it did not receive proper service of the objection to Claim No. 2 pursuant to Fed. R. Bankr. P. 9014(b) and Fed. R. Bankr. P. 7004(b)(3).

12. 21<sup>st</sup> Mortgage admits that the court entered an order on November 20, 2020 which provided that Claim No. 2 be allowed as an unsecured claim only. 21<sup>st</sup> Mortgage denies the remaining allegations contained in paragraph 12 of the Complaint.

13. 21<sup>st</sup> Mortgage denies the allegation contained in paragraph 13 of the Complaint.

### **AFFIRMATIVE DEFENSES**

1. 21st Mortgage affirmatively asserts that it has a properly perfected interest in the Manufactured Home, and that the debtors have failed to state a claim upon which relief can be granted.

2. In addition, 21<sup>st</sup> Mortgage affirmatively asserts the following defenses: estoppel, fraud, illegality and laches.

WHEREFORE, 21st Mortgage seeks the following relief:

1. An order dismissing plaintiffs' claims with prejudice;
2. For its costs, disbursements and reasonable attorney's fees incurred herein;

and,

3. For such other relief as the Court deems just and equitable.

**MESSERLI & KRAMER P.A.**

Dated: March 9, 2021

*s/Terri A. Running*

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